

§ 412.260 Time and place of the oral hearing.

If the MGCRB decides that an oral hearing is necessary, it sets the time and place for the hearing and notifies the parties in writing, with a copy to CMS, not less than 10 days before the time scheduled for the hearing. The MGCRB may reschedule, adjourn, postpone, or reconvene the hearing provided that reasonable written notice is given to the parties, with a copy to CMS.

§ 412.262 Disqualification of an MGCRB member.

(a) *Grounds for disqualification.* An MGCRB member may not participate in any decision in a case in which he or she may be prejudiced or partial with respect to a party or has any other interest in the case.

(b) *Request for disqualification.* If a party believes that an MGCRB member should not participate in a decision, the party submits the objection in writing to the MGCRB at its earliest opportunity, explaining the grounds for the request. CMS may also submit such a suggestion to the MGCRB.

(c) *Consideration by the MGCRB member.* The MGCRB member will consider the objection and, at his or her discretion, either will proceed or withdraw.

(d) *Consideration by the MGCRB.* If the member does not withdraw, a party may petition the MGCRB for withdrawal and the MGCRB will consider the objection and rule on whether the member may participate in the decision before it decides the case.

§ 412.264 Evidence and comments in MGCRB proceeding.

(a) *Submission by the parties.* Before a decision is issued and during an oral hearing, the parties may present evidence or comments to the MGCRB regarding the matters at issue in the case.

(b) *Content of evidence and comments.* The MGCRB may receive evidence and comments without regard for the rules of evidence applicable to court procedures.

(c) *Ex parte communications.* (1) The members of the MGCRB and its staff may not consult or be consulted by an individual representing the interests of

an applicant hospital or by any other individual on any matter in issue before the MGCRB without notice to the hospital or CMS. If such communication occurs, the MGCRB will disclose it to the hospital or CMS, as appropriate, and make it part of the record after the hospital or CMS has had an opportunity to comment. MGCRB members and staff may not consider any information outside the record about matters concerning a hospital's application for reclassification.

(2) The provisions in paragraph (c)(1) of this section do not apply to the following:

(i) Communications among MGCRB members and staff.

(ii) Communications concerning the MGCRB's administrative functions or procedures.

(iii) Requests from the MGCRB to a party or CMS for a document.

(iv) Material that the MGCRB includes in the record after notice and an opportunity to comment.

(d) *MGCRB rulings on evidence and comments.* The MGCRB rules upon the admissibility of evidence and comments and excludes irrelevant, immaterial, or unduly repetitious evidence and comments.

§ 412.266 Availability of wage data.

A hospital may obtain the average hourly wage data necessary to prepare its application to the MGCRB from FEDERAL REGISTER documents published in accordance with the provisions of § 412.8(b).

[60 FR 45849, Sept. 1, 1995]

§ 412.268 Subpoenas.

(a) *In general.* When reasonably necessary for the full presentation of a case, and only after a pre-decision request for information or data has failed to produce the necessary evidence, either upon its own motion or upon the request of a party, the MGCRB may issue subpoenas for the attendance and testimony of witnesses, for an oral hearing or the production of books, records, correspondence, papers, or other documents that are relevant and material to any matter at issue.